

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Zinus, Inc., a California corporation,

Plaintiff,

v.

Simmons Bedding Company, a Delaware
corporation, et.al.,

Defendants.

No. C07-03012PVT

NOTICE OF SETTLEMENT
CONFERENCE AND SETTLEMENT
CONFERENCE ORDER

TO ALL PARTIES AND COUNSEL OF RECORD:

The above matter having been referred to Magistrate Judge Howard R. Lloyd for Settlement Conference, you are hereby notified that the conference is scheduled for **December 5, 2007 at 9:30 a.m.** in Courtroom 2, United States Courthouse, 280 South First Street, San Jose, California.

Lead trial counsel shall appear at the Settlement Conference with the parties and with the person or persons having full authority to negotiate and to settle the case. In all cases in which a party is insured, the carrier's claims representative (and attorney, if any) with full authority to negotiate up to the limits of coverage shall also attend the Settlement Conference.

Personal attendance by counsel will not be excused under any circumstances and personal attendance by a party will rarely be excused. Permission for a party to attend by telephone may be granted upon written request made at least ten (10) calendar days in advance of the conference, if the party lives and works outside of the Northern District of California and attendance would constitute a severe, demonstrable hardship. The nature of the hardship must be explained. A copy of the

1 written request must be served on all other parties. Any objection to the request must be submitted
2 within forty-eight (48) hours of receipt. Both the request and objection may be submitted in letter
3 form either by mail or facsimile to (408) 535-5410. If telephone attendance is allowed, the party
4 must be available throughout the entire conference.

5 Not later than seven (7) calendar days before the Settlement Conference, each party shall
6 submit to Judge Lloyd a:

- 7 • **Settlement Conference Statement**, and a
- 8 • **Confidential Settlement Letter**

9 Both shall be placed in a sealed envelope marked "Settlement Conference Documents, Attn:
10 Magistrate Judge Lloyd" and lodged with the Clerk's office, Room 2112, at the Courthouse in San
11 Jose. The Clerk will forward the envelope to Judge Lloyd's chambers. These papers will not be
12 filed with the Court.

13 **At the same time, a copy of the Settlement Conference Statement SHALL be served on**
14 **all counsel and parties in pro se.**

15 **A copy of the Confidential Settlement Letter SHALL NOT be served on other counsel**
16 **or pro se parties.**

17 The form and content of the **Settlement Conference Statement** may vary depending upon
18 the nature of the case, the stage of the proceedings, and economic considerations. Generally, it
19 should include the following information:

- 20 1. Statement of Facts. A brief description of the substance of the claims and defenses
21 presented.
- 22 2. Summary of Proceedings. A brief list of previous motions and their disposition, plus
23 pending motions.
- 24 3. Undisputed Matters. A plain and concise statement of all material facts not reasonably
25 disputable.
- 26 4. Issues of Fact. A plain and concise statement of the major factual issues in dispute.
- 27 5. Issues of Law. Including references to statutes and case law, a brief statement of the
28 disputed points of law with respect to liability and damages. Extended legal argument is not

1 necessary.

2 6. Relief Sought. A statement of the relief claimed, including a particularized itemization of
3 all elements of damages.

4 7. Prior Settlement Discussions. A summary of prior settlement activity between the parties,
5 including demands and offers.

6 The **Confidential Settlement Letter** shall include the following:

7 1. Party Representative. If the party is not a natural person, the name, title, and level of
8 responsibility of the person(s) attending the Settlement Conference on behalf of the party.

9 2. Litigation Costs. A brief statement of the approximate litigation costs to date and the
10 estimated cost and time projected for further discovery, pretrial proceedings and trial.

11 3. Settlement Analysis. A brief and forthright evaluation of the strengths and weaknesses of
12 the case and the probabilities of prevailing on the major issues in dispute.

13 4. Discrete Issues. Are there any discrete issues affecting the parties which, if resolved,
14 would aid in the disposition of the case?

15 5. Current Settlement Position. Set forth a reasonable proposal of settlement.

16 6. Other. Any other pertinent information which counsel or a pro se party wishes to share
17 with the court in confidence.

18 Because the settlement conference will likely involve some assessment by Judge Lloyd of the
19 claims, defenses, and relief sought in the case, parties should bring with them documents, deposition
20 testimony, and any other materials, which support their positions.

21 It is not unusual for conferences to last two, three, or more hours. Parties are encouraged to
22 participate and frankly discuss their case. Statements they make during the conference will not be
23 admissible at trial to prove or disprove liability in the event the case does not settle. The parties
24 should be prepared to explore such topics as their settlement objectives, perceived impediments to
25 settlement, and possible creative avenues of resolution that would not be possible except through a
26 negotiated settlement.

27 Any request to continue the Settlement Conference shall be submitted in writing promptly
28 after consultation with the opposing party. Submission by facsimile is acceptable (408) 535-5410.

1 The parties shall notify Magistrate Judge Lloyd's Courtroom Deputy **immediately** at (408)
2 535-5365 if this case settles prior to the date set for Settlement Conference.

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4 IT IS SO ORDERED.

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6 DATED: November 19, 2007

7 /s/ Howard R. Lloyd
8 HOWARD R. LLOYD
9 United States Magistrate Judge
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1 THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

2 Counsel are responsible for distributing copies of this document to co-counsel who have not
3 registered for e-filing under the court's CM/ECF program.

4
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